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In the Supreme Court of the United States

OCTOBER TERM, 1997

ALTA BATES CORPORATION, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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QUESTION PRESENTED

Whether the National Labor Relations Board properly determined that petitioners constituted a "single employer" for purposes of the National Labor Relations Act.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is unpublished, but the decision is noted at 116 F.3d 482 (Table). The decision and order of the National Labor Relations Board (Pet. App. 5a-13a) and the decision of the administrative law judge (Pet. App. 13a-61a) are reported at 320 N.L.R.B. 1050.

JURISDICTION

The judgment of the court of appeals was entered on June 4, 1997. A petition for rehearing was denied on July 17, 1997. The petition for a writ of certiorari was filed on September 11, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Section 2(2) of the National Labor Relations Act (Act), 29 U.S.C. 152(2), provides, in pertinent part, that "the term 'employer' includes any person acting as an agent of an employer, directly or indirectly." Under settled decisions of the courts and the National Labor Relations Board (Board), two or more nominally separate entities may constitute a "single employer" under the Act, and in determining whether two or more entities are in fact a single employer, the Board considers four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) centralized control of labor relations.[1] No one factor alone is controlling, nor is any factor a necessary prerequisite for a finding of single-employer status.[2] Rather, "[s]ingle employer status ultimately depends on all the circumstances of the case and is characterized as an absence of an arm's length relationship found among unintegrated companies."[3]

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[1] See Pet. App. 3a; *South Prairie Construction Co.* v. *Local No. 627, Int'l Union of Operating Eng'rs*, 425 U.S. 800, 802 n.3 (1976); *Radio & Television Broadcast Technicians Local Union 1264* v. *Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965).

[2] See Pet. App. 3a; see also *Vance* v. *NLRB*, 71 F.3d 486, 490 (4th Cir. 1995); *International Bhd. of Elec. Workers, Local 613* v. *Fowler Industries, Inc.*, 884 F.2d 551, 553 n.3 (11th Cir. 1989), cert. denied, 494 U.S. 1066 (1990); *NLRB* v. *Big Bear Supermarkets*, 640 F.2d 924, 928 (9th Cir.), cert. denied, 449 U.S. 919 (1980).

[3] *NLRB* v. *Don Burgess Construction Corp.*, 596 F.2d 378, 384 (9th Cir.) (internal quotation marks omitted), cert. denied, 444 U.S. 940 (1979); see also Pet. App. 3a; *Vance* v. *NLRB*, 71 F.3d 486, 490 (4th Cir. 1995); *Local No. 627, Int'l Union of*

2. Petitioner Alta Bates Corporation (ABC) is a California non-profit corporation that coordinates the operations of non-profit hospitals and other related health-care organizations. Pet. App. 18a. Petitioner Alta Bates Medical Center (ABMC) is a California non-profit corporation that operates two hospitals in Berkeley, California. *Id.* at 19a.[4] Petitioner Pathology Institute, Inc. (PI), before its closure in 1992, was a for-profit, wholly owned subsidiary of ABC and ABMC that provided laboratory testing services to numerous physicians and hospitals in the Berkeley area, including ABMC. *Id.* at 6a, 21a, 22a, 33a.

In June 1992, ABC and ABMC closed PI for financial reasons. PI's assets were sold to a third party, except for those located at ABMC's two hospitals, which were purchased by ABMC. Pet. App. 21a-22a, 23a-29a. At the time of its closure, PI's medical laboratory technologists were represented by Office and Professional Employees International Union, Local 29, AFL-CIO (Union), and there was a collective-bargaining agreement in place between PI and the Union, effective from February 1, 1991 through October 31, 1993. *Id.* at 6a. To staff the laboratory operations at its hospitals, ABMC hired Union-represented medical laboratory technologists,

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Operating Eng'rs v. *NLRB*, 518 F.2d 1040, 1046 (D.C. Cir. 1975), aff'd in relevant part *sub nom. South Prairie Construction Co.* v. *Local No. 627, Int'l Union of Operating Eng'rs*, 425 U.S. 800 (1976).

[4] Prior to 1992, ABMC was known as Alta Bates-Herrick Hospital. Pet. App. 20a. The name change in 1992 "caused no substantive change in the underlying entity." *Id.* at 32a. Accordingly, we refer to both Alta Bates Medical Center and Alta Bates-Herrick Hospital simply as ABMC.

all of whom had previously been employed by PI. *Id.* at 29a. ABMC and the Union negotiated a labor agreement for the medical laboratory technologists, but the employees refused to ratify it. *Id.* at 30a. Thereafter, ABMC unilaterally instituted its own employment terms and refused to recognize the Union as the employees' bargaining representative. *Ibid.*

3. a. Acting on unfair labor practice charges filed by the Union, the Board's Regional Director issued a complaint against ABC, ABMC, and PI. Pet. App. 13a. The administrative law judge (ALJ) found that "a preponderance of the evidence, viewed in its entirety, establishes [the] existence of a sufficient inter-relationship among the three entities [*i.e.* ABC, ABMC, and PI] * * * to conclude that they constituted * * * a single employer." *Id.* at 17a. He therefore concluded that the three entities violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), by failing to apply PI's contract with the Union to the medical laboratory technologists. *Ibid.* The ALJ's findings respecting the factors relevant to the question of single-employer status may be summarized as follows:

Common ownership. ABC and ABMC are non-profit entities, which are operated by "members." ABC and an entity known as the Alta Bates Community Member are ABMC's "members," each of which has a single vote. Thus, ABC may "preclude action" by ABMC by "declin[ing] to vote as does the Alta Bates Community Member." Pet. App. 31a-32a. ABC and ABMC each own 48% of PI's stock, and thereby "possess ownership of * * * PI to the same degree as does any parent over its wholly owned subsidiary." *Id.* at 21a, 33a.

Common management and control of operations. In the years preceding PI's closure, there was "considerable overlap of members between the board of directors of * * * ABC and the board of trustees of * * * ABMC." Pet. App. 43a. From 1989 through 1992, a majority of the members of ABMC's board of trustees also served on ABC's board of directors, and in each of those years, the chairman of ABMC's board of trustees was also a member of ABC's board of directors. *Id.* at 43a-44a.

There was also substantial commonality of management between ABC and ABMC, on the one hand, and PI, on the other. Pet. App. 44a-45a. In 1992, two members of PI's 12-member board of directors served on ABC's or ABMC's boards, and another eight members had ties to ABC or ABMC; all ten individuals were selected to serve on PI's board by ABC and ABMC. *Ibid.* From April 1991 until PI's closure in June 1992, Robert Reed, ABC's chief financial officer, simultaneously served on PI's board and was PI's interim president and acting chief executive officer, its "highest policy-making official." *Id.* at 45a, 46a. Reed was appointed to that position by Robert Montgomery, ABC's chief executive officer and president. *Id.* at 50a.

ABC possessed "institutional and operational control" over ABMC and PI, and exercised "significant owner and membership control" over ABMC and PI. Pet. App. 41a, 47a. ABC reviewed ABMC's and PI's annual budgets, "both in the aggregate and by line item," and in certain instances ABC approved PI's budget subject to PI's acceptance of ABC's revisions. *Id.* at 47a. ABC's prior approval was required for such matters as ABMC's "major transactions or major policies" and changes to ABMC's by-laws. *Id.*

at 42a. Reed, PI's chief executive officer, and Albert Greene, ABMC's chief executive officer, both reported to Robert Montgomery, ABC's chief executive officer, regarding the overall "relationships" between the entities, and "to meet the financial targets and * * * whatever financial obligations" existed among them. *Id.* at 47a. ABC and ABMC "dictate[d] [PI's] course and, indeed, its very existence"; thus, ABC and ABMC closed PI and sold its assets without consulting the Alta Bates Community Member about the decision. *Id.* at 42a.

Interrelationship of operations. ABC, ABMC, and PI possessed "a high degree of operational integration * * * exceeding what might be expected of truly separate enterprises." Pet. App. 41a. The "most graphic display" of that operational integration was the assignment of Reed, ABC's chief financial officer, to serve concurrently as PI's acting chief executive officer and interim president. *Id.* at 24a, 40a, 45a. Further, ABMC was PI's "principal customer," accounting for about 40% of PI's revenue; Montgomery, ABC's chief executive officer, periodically contacted executives at other hospitals to encourage them to purchase PI's laboratory services. *Id.* at 34a, 40a. The prices that PI and ABMC negotiated for laboratory services that PI provided ABMC were reviewed by ABC, and Reed, as ABC's chief financial officer, became involved in pricing disagreements between ABMC and PI. *Id.* at 39a-40a.

ABC provided ABMC and PI with "core services" and "purchase services." Core services generally involved strategic planning matters, which ABMC and PI were required to buy from ABC for a fee set by ABC; the "most significant" purchase service was a "cash pool fund" established by ABC, in which ABMC

and PI participated. Pet. App. 34a-35a. Through the cash pool, ABMC granted PI a $1.1 million line of credit in 1989, and in 1990, when that loan was not timely repaid by PI, ABMC extended the loan and granted PI an additional $500,000 line of credit. *Id.* at 37a. Neither loan was collateralized by PI, and neither was repaid until PI's closure. *Ibid.* ABC received $2.1 million in loans from ABMC through the cash pool. *Ibid.* ABMC began paying PI's accounts payable in 1989 from ABMC's checking accounts, for which ABMC was reimbursed from the cash pool. *Id.* at 38a.[5]

Centralized control of labor relations. ABMC's labor relations were "directly supervised" by its vice president of human resources, Ruth Robinson; PI's labor relations were "handled directly" by its director of human relations, Beverly Chilton. Pet. App. 48a, 49a. Chilton reported directly on labor relations matters to Reed, who served as both PI's chief executive officer and ABC's chief financial officer. Reed acknowledged that, during the 14 months before PI closed, he "'would have made the decisions' concerning * * * PI's labor relations." *Id.* at 48a. Reed "admitted having been the official responsible

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[5] The ALJ noted that his finding of a "degree of operational integration * * * exceeding what might be expected of truly separate enterprises" (Pet. App. 41a) was buttressed by the facts that officials of ABC and ABMC were authorized to sign checks drawn on PI's bank accounts (*id.* at 38a); ABC, ABMC, and PI retained the same auditing firm (*id.* at 40a); ABC, ABMC, and PI retained the same law firms to handle various legal matters, including labor relations (*ibid.*); and PI leased space on ABMC's property without a written agreement, even though it had written leases for space it occupied elsewhere (*ibid.*).

for * * * PI's negotiations with the Union for a closing agreement," and "in formulating positions on labor matters, 'the parameters that are set for [Reed] are set through a budget, the global budget process,'" which was controlled by ABC. Reed reported on PI's labor matters to PI's board of directors, almost all of whom had been selected by ABC and ABMC to serve on PI's board. *Id.* at 48a-49a.

Albert Greene, ABMC's chief executive officer, "occupie[d] the same role with respect to * * * ABMC's labor relations as did Reed * * * concerning those of * * * PI." Pet. App. 49a. "Greene establishe[d] the parameters for [ABMC's labor relations] and [sought] approval and authority for his actions from * * * ABMC's governing board," a majority of whom also served on ABC's board. ABC's approval was required for ABMC's budget, and Greene was under a duty to report to ABC's chief executive officer respecting "any labor relations matter that might have an effect upon * * * ABMC's relationship with other entities." *Id.* at 49a-50a.

In addressing the factor of centralized labor-relations control, the ALJ acknowledged that "there has not been an actual exercise of labor relations control here that is so extensive and intrusive as occurs, for example, when a single proprietor operates two interrelated small companies." Pet. App. 51a. The ALJ observed, however, that the factor of centralized control of labor relations relevant to single-employer status "does not require micromanagement of each entity's labor relations by the same individual," and "[t]hat could not be expected to occur whenever entities of any size are involved." *Ibid.* The ALJ also observed that "it is not crucial that one of [petitioners'] officials did not directly

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oversee the work forces of the other two"; rather, "[i]n assessing the appropriateness of single-employer treatment, the fact that day-to-day labor matters are handled at the local level is not controlling," because the "more critical test is whether the controlling company possessed the present and apparent means to exercise its clout in matters of labor negotiations by its divisions or subsidiaries." Pet. App. 48a (quoting *Royal Typewriter Co.* v. *NLRB*, 533 F.2d 1030, 1043 (8th Cir. 1976)). The ALJ concluded that "[a] preponderance of the evidence shows that existed here." Pet. App. 51a.

b. The Board affirmed the ALJ's determination that ABC, ABMC, and PI constituted a single employer, and it specifically rejected petitioners' contention that there was insufficient evidence of centralized control of labor relations among them. Pet. App. 5a & n.1. The Board also concluded (as had the ALJ) that petitioners violated the Act by failing to apply PI's contract with the Union to the medical laboratory technologists, and further concluded (contrary to the ALJ) that petitioners had unlawfully refused to recognize the Union as the employees' bargaining representative. *Id.* at 6a-9a. The Board's order requires petitioners to recognize and bargain with the Union as the exclusive representative of the medical laboratory technologists employed by ABMC at its two hospital locations, and to make those employees whole for any losses suffered as a result of petitioners' failure to apply to them the collective-bargaining agreement between PI and the Union. *Id.* at 9a-11a.

4. The court of appeals enforced the Board's order in an unpublished opinion. Pet. App. 1a-4a. The court noted that, under settled law, "[t]o find a 'single

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employer,' all four factors [*i.e.*, common ownership, common management, interrelated operations, and centralized control of labor relations] need not be present," and that "[s]ingle employer status ultimately depends on all the circumstances of the case." *Id.* at 3a. After reviewing the principles applicable to the single-employer determination, the court ruled that substantial evidence supported the Board's determination that ABC, ABMC, and PI constituted a single employer. *Ibid.*

ARGUMENT

Petitioners contend that they do not constitute a single employer for purposes of the National Labor Relations Act, and in particular, that the Board erred in concluding that their labor relations were subject to centralized control. See Pet. 7-17. The decision of the court of appeals upholding the Board's single-employer determination as supported by substantial evidence is correct, and the court's decision does not conflict with any decision of this Court or of another court of appeals. Further review is therefore not warranted.

1. a. Petitioners' principal contention (Pet. 8) is that the court of appeals applied an incorrect legal standard in upholding the Board's single-employer determination. That is so, according to petitioners (*ibid.*), because the ALJ, whose decision the court upheld, ruled that "the single-employer doctrine requires only the ability or potential for one entity to exercise control over the labor relations of other commonly owned entities." There is no merit to that argument, which rests on a mistaken characterization of the ALJ's decision.

Contrary to petitioners' contention, the ALJ did not hold that, as a general rule, a mere "ability or potential" for one entity to control the labor relations of another entity by virtue of its ownership interest in that entity suffices to demonstrate common control of labor relations between those entities. Rather, the ALJ found that, although ABMC's and PI's respective human resource directors, Ruth Robinson and Beverly Chilton, handled labor matters on a "day-to-day" basis (Pet. App. 48a, 49a), and although there had not been an "actual exercise of labor relations control here *that is so extensive and intrusive as occurs, for example, when a single proprietor operates two interrelated small companies*" (*id.* at 51a; emphasis added), nonetheless, ABC "possessed the present and apparent means to exercise its clout" over ABMC's and PI's labor relations through its control over Reed and Greene, the executive officers who established ABMC's and PI's respective labor-relations policies. *Id.* at 48a-51a. In other words, the *authority* to set labor-relations policies for all three entities was actually, if ultimately, located in ABC; the responsibility for implementing those policies was remitted to the entities' responsible officials.

Thus, Reed, who was ABC's chief financial officer, also "made the decisions" respecting PI's labor relations during the 14-month period prior to its closure in June 1992, when he served as head of PI, and he was responsible for negotiating an agreement with the Union regarding PI's closure. Reed "formulat[ed] positions on labor matters," operating within "parameters" that were "set through * * * the global budget process," which was controlled by ABC. Reed reported on labor matters to PI's board of directors, almost all of whom had been selected by ABC and

ABMC to serve on PI's board. Pet. App. 48a-49a. Similarly, Greene, ABMC's chief executive officer, "establishe[d] the parameters" for ABMC's labor relations and sought "approval and authority for his actions from * * * ABMC's governing board," a majority of whom also served on ABC's board. Greene was required to report to ABC's chief executive officer concerning "any labor relations matter that might have an effect upon * * * ABMC's relationship with other entities." And, like those at PI, ABMC's labor relations were formulated within the "parameters" of a budget-approval process that ABC controlled. *Id.* at 49a-50a.

Accordingly, the facts of this case, as found by the ALJ and upheld by the Board and the court of appeals, demonstrate that ABC effectively controlled ABMC's and PI's labor relations at the policy-making level. While ABC did not engage in "micromanagement of each entity's labor relations" on a day-to-day basis (Pet. App. 51a), the courts have recognized that that circumstance is not dispositive of the inquiry; rather, "[w]here the major labor policy decisions are made by a central authority, the Board may reasonably find that the criterion of centralized control of labor relations has been met." *NLRB* v. *Carson Cable TV*, 795 F.2d 879, 883-884 (9th Cir. 1986). As the ALJ correctly ruled here, the evidence supported a finding of single-employer status among ABC, ABMC, and PI, for ABC "possessed and exercised control over critical matters at the policy level, including the present and apparent means to exercise its clout in labor relations matters." *Penntech Papers, Inc.* v. *NLRB*, 706 F.2d 18, 26 (1st Cir.), cert. denied, 464 U.S. 892 (1983); see also *Royal Typewriter Co.* v. *NLRB*, 533 F.2d 1030, 1042-1043 (8th Cir. 1976) (sustaining

Board's single-employer finding where, "[b]y staffing the division offices with [the corporation's] officers and retaining control over all fundamental decisions, [the corporation] had positioned itself to control the course of [the division's] negotiations").[6]

b. There is no merit to petitioners' contention (Pet. 8-10) that the court of appeals' decision, in upholding the Board's single-employer determination, conflicts with the decisions of other courts of appeals. The cases cited by petitioners generally recognize (as the court below recognized) that separate entities cannot be deemed a single employer or "allies" for purposes of the Act's secondary-boycott provisions (see 29 U.S.C. 158(b)(4)) based only upon the potential for operational control inherent in common ownership. For example, in *Boich Mining Co.* v. *NLRB*, 955 F.2d 431 (6th Cir. 1992), the court noted that "[c]ommon ownership and potential control of the day-

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[6] There is no merit to petitioners' contention (Pet. 13-14) that the decisions of the Board and the court of appeals rest on a "misreading" of *Royal Typewriter*. There, in upholding the Board's single-employer determination, the court noted, among other things, evidence that the controlling entity "had positioned itself to control the course of Royal's negotiations," and that "Royal's negotiators capitalized on this element of subservience in an effort to induce the Union to accept Royal's proposed termination agreement." *Royal Tyepewriter*, 533 F.2d at 1043. The court did not, however, hold that evidence of such "subservience" on the part of the controlled entity's labor officials is a prerequisite of single-employer status, but only that such evidence will support a finding of single-employer status. *Ibid.* Petitioners are therefore incorrect in asserting (Pet. 14) that "*Royal Typewriter* requires more than just the means to control labor relations; it requires an actual course of conduct at the local level to demonstrate the existence of that clout."

to-day activities of corporate divisions is inherent in every corporate division relationship"; thus, the fact that two entities are wholly owned subsidiaries of the same holding company "in and of itself is not enough to establish that the two companies are so closely entwined as to be treated as a single entity." *Id.* at 434, 435 (internal quotation marks omitted). Similarly, in *Miami Newspaper Pressmen's Local No. 46* v. *NLRB*, 322 F.2d 405 (D.C. Cir. 1963), the court observed that "common ownership alone does not suffice" to establish ally status; rather, "[t]here must be something more in the form of common control * * * denoting an actual, as distinct from merely a potential, integration of operations and management policies." *Id.* at 408-409. See also *J.G. Roy & Sons Co.* v. *NLRB*, 251 F.2d 771, 773 (1st Cir. 1958) (noting that "there must be more than the potential control inherent in common ownership" to establish ally status); *Drivers Local No. 639 (Poole's Warehousing)*, 158 N.L.R.B. 1281, 1286 (1966) (same).[7]

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[7] Petitioners also argue (Pet. 12-13) that the court of appeals misconstrued *Sakrete of Northern California, Inc.* v. *NLRB*, 332 F.2d 902 (9th Cir. 1964), cert. denied, 379 U.S. 961 (1965), in upholding the Board's single-employer determination. Even if petitioners were correct, a conflict among the decisions of one court of appeals would not warrant review by this Court. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957). In any event, petitioners' contention is without merit. In *Sakrete of Northern California*, the Ninth Circuit (like the Board and the court below in this case) rejected the contention that, in a single-employer determination, "centralized control of labor relations * * * must pertain to normal or current business operations at the local level"; rather, the court concluded that, "[i]f there is overall control of critical matters at the policy level, the fact that there are variances in local management

The decision below is consistent with the principles articulated in those decisions, for the ALJ's single-employer determination did not rest solely on the commonality of ownership among ABC, ABMC, and PI, or the potential for inter-company control inherent in that common ownership. Rather, in addition to its ownership interest in ABMC and PI, ABC exercised significant owner and membership control over ABMC and PI—for example, by installing Reed, ABC's chief financial officer, to run PI (Pet. App. 34a-35a, 48a-50a), and by requiring prior approval of ABMC's major transactions and major policies, and requiring ABMC and PI to submit their annual budgets to ABC for approval (*id.* at 41a-42a, 47a). There was also "a high degree of operational integration" among petitioners that "exceed[ed] what might be expected of truly separate enterprises" (*id.* at 41a)—for example, PI was dependent on ABMC's business and the operation of the "cash pool fund," in which all three entities participated (*id.* at 34a-35a); ABC's chief financial officer made PI's labor-relations decisions (*id.* at 48a); ABMC's chief executive officer sought "approval and authority" for his labor-relations decisions from ABMC's governing board, which was controlled by ABC (*id.* at 49a); and ABC and ABMC "dictat[ed] [PI's] course and, indeed, its very existence." *Id.* at 42a.[8]

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decisions will not defeat application of the 'single employer' principle." 322 F.2d at 907.

[8] Petitioners cite several other cases involving the Act's secondary-boycott provisions in support of their contention of a conflict of decisions (Pet. 9), but those cases are factually distinguishable from the present case. In *American Federation of Television & Radio Artists* v. *NLRB*, 462 F.2d 887 (D.C. Cir. 1972), the court agreed with the Board that two divisions of a

2. Petitioners also contend (Pet. 16-17) that the court of appeals' decision "effective[ly] repeal[s]" the Act's prohibition on secondary boycotts as it applies to commonly owned but otherwise "autonomously operated" businesses and "remove[s] * * * bargaining rights from employers who hire workers from businesses under common ownership." There is no merit to those contentions, for they are based, first, on the erroneous factual premise that petitioners were actually "autonomously operated," and second, on the erroneous legal premise that the Board's single-employer finding in this case was "based solely on the potential for common control of management

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corporation were separate entities, where "[the corporation's] ultimate power to control has not been exercised." *Id.* at 892. In *Bachman Machine Co.* v. *NLRB*, 266 F.2d 599 (8th Cir. 1959), the court concluded that two entities were not "so intimately and inextricably united as to constitute them one employer," where the majority stockholder of both entities participated in one entity's bargaining sessions, but not in those of the other entity. *Id.* at 605. See also *Limbach Co.* v. *Sheet Metal Workers Int'l Ass'n*, 949 F.2d 1241, 1259-1261 (3d Cir. 1991) (en banc) (jury could reasonably find that a parent corporation and two subsidiaries were not a single employer where there was evidence that presidents of subsidiaries ran them "independently" of the parent and "labor relations were intentionally kept decentralized"); *Sheet Metal Workers Int'l Ass'n, Local Union No. 223* v. *Atlas Sheet Metal Co.*, 384 F.2d 101, 107 (5th Cir. 1967) (upholding jury's finding that parent and wholly owned subsidiary were separate employers, where "the evidence is capable of supporting both the inference that [the parent] exercised actual control over [the subsidiary] and the inference that such actual control was lacking"). The differences in outcome between this case and those relied on by petitioner therefore reflect only differences in the facts, and not the application of different legal standards by the courts of appeals.

functions and labor relations." See Pet. 16. As we have explained, the ALJ (upheld by the Board and the court of appeals) determined as a matter of fact that ABC, ABMC, and PI were not "unaffiliated[] distant cousins" (*ibid.*) but were in fact closely integrated and subject to ABC's control of labor-relations policy. Nor, as we have explained, did the ALJ base his single-employer finding solely upon the "potential" for control inherent in petitioners' common ownership. There is accordingly no reason to regard the Board's decision, or that of the court below enforcing it (which in any event is unpublished and without precedential value, see Pet. App. 2a n.*), as having changed existing law in the respects asserted by petitioners.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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